

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

Andrew S. Friedman
Wendy J. Harrison (SBN 151090)
2901 North Central Ave., Suite 1000
Phoenix, AZ 85012
(602) 274-1100

CHAVEZ & GERTLER, L.L.P.

Mark A. Chavez (SBN 90858)
Jonathan Gertler (SBN 111531)
Nance F. Becker (SBN 99292)
42 Mill Avenue
Mill Valley, California 94941
(415) 381-5599

Attorneys for Plaintiffs
[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAVIER AND LETICIA ZAMORA and
DANIEL PEREZ and ELIZABETH
PEREZ,

Plaintiff,

vs.

WACHOVIA CORPORATION and
WORLD SAVINGS BANK,

Defendants.

Case No.: C 07-4603 JSW

STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER REGARDING
CONFIDENTIAL, TRADE SECRET AND
PRIVATE CONSUMER INFORMATION

The Honorable Jeffrey S. White

In order to protect confidential, trade secret, proprietary and private consumer information, good cause appearing, and based on the stipulation of the parties to this action

IT IS HEREBY ORDERED AS FOLLOWS:

This Order shall govern the use of confidential, trade secret and private consumer information produced during discovery in this proceeding. As used in this Order, the term “party” shall mean all named parties in the above-styled action, including any named party added or joined to this action. As used in this Order, the term “non-party” shall

1 mean any individual, corporation, association, or other natural person or entity other than
2 a party. The term "documents" as used herein is intended to be comprehensive and
3 includes any and all materials in the broadest sense contemplated by Rule 34 of the
4 Federal Rules of Civil Procedure. For purposes of this Order, the party or non-party
5 designating information, documents, materials or items as confidential bears the burden
6 of establishing the confidentiality of all such information, documents, materials or items.

7 1. For the purposes of this Order, "Confidential" information means the
8 following types of documents and information:

9 (a) Information that constitutes a trade secret in accordance with Cal.
10 Civil Code § 3426.1;

11 (b) Non-public communications with regulators or other governmental
12 bodies that are intended to be kept confidential and/or are protected from disclosure by
13 statute or regulation;

14 (c) Information, materials, and/or other documents reflecting non-public
15 business or financial strategies, and/or confidential competitive information which, if
16 disclosed, would result in prejudice or harm to the disclosing party; and

17 (d) Borrower-specific information, including private consumer
18 information that contains identifying, contact or private financial information provided by
19 a consumer to a financial institution, resulting from any transaction with the consumer or
20 any service performed for the consumer, or otherwise obtained by the financial
21 institution, including any list, description, or other grouping of consumers (and publicly
22 available information pertaining to them) that is derived using any nonpublic personal
23 information, including any "nonpublic personal information" such as identified by the
24 Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*

25 2. Any party may seek an amendment to this Order to designate confidential
26 documents and information in addition to the categories described in Paragraph 1 before
27 production of any such documents and information. The parties agree to meet and confer
28

1 in good faith and attempt to reach agreement on any request by a party to designate such
2 additional categories of confidential documents or information.

3 3. Confidential documents shall be so designated by stamping copies of the
4 document produced to a party with one of the following legends:

5 "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER,"

6 "CONFIDENTIAL" or "CONFIDENTIAL PRIVATE CONSUMER
7 INFORMATION"

8 Any such stamp or designation shall not cover up, obscure or otherwise conceal
9 any text, picture, drawing, graph or other communication or depiction in the document.

10 If such designation is not feasible (*e.g.* in the case of certain electronic documents), then
11 such designation may be made by informing the other parties in writing.

12 4. The designation of any material as "Confidential" pursuant to this Order
13 shall constitute the verification of counsel for the producing party or non-party that the
14 material constitutes Confidential information as defined in Paragraph 1 of this Order.

15 5. Documents produced by a party or non-party or their counsel ("Designating
16 Party") and as confidential under this Order (hereinafter "Confidential Material") may be
17 disclosed or made available only to the following persons (hereinafter "Qualified
18 Persons"):

19 (a) The parties to this action or an officer, director, or employee of a
20 party deemed reasonably necessary by counsel to aid in the prosecution, defense, or
21 settlement of this action;

22 (b) Counsel for the parties to this action ("Counsel"), including all
23 partners and associate attorneys of such Counsel's law firms and all clerks, employees,
24 independent contractors, investigators, paralegals, assistants, secretaries, staff and
25 stenographic, computer, audio-visual and clerical employees and agents thereof when
26 operating under the direct supervision of such partners or associate attorneys and who are
27 actually working on this action, all of whom shall be bound by this Order;
28

1 (c) The Court and any person employed or retained by the Court whose
2 duties require access to confidential material;

3 (d) Stenographic reporters or audio-visual personnel engaged in
4 connection with this action including deposition reporters, video operators and
5 transcribers;

6 (e) Any person who created, authored, received or reviewed such
7 Confidential Material and those persons identified on such Confidential Material as
8 creators, authors or recipients of the Confidential Material;

9 (f) Actual and/or potential trial or deposition witnesses, where counsel
10 believes, in good faith, that disclosure is necessary to prepare for or develop the
11 testimony of such witnesses;

12 (g) Experts or consultants retained by such counsel to assist in the
13 prosecution, defense, or settlement of this action and their respective employees,
14 associates or colleagues;

15 (h) Employees of firms engaged by the parties for purposes of
16 photocopying, electronic imaging or computer litigation support in connection with this
17 litigation; or

18 (i) Such other persons as may be designated by written agreement of
19 Counsel or by order of the Court.

20 6. Prior to receiving any Confidential Material, each Qualified Person
21 described in paragraphs 5(e) through 5(g) shall be provided with a copy of this Order and
22 shall execute an Agreement to Maintain Confidentiality (hereinafter "Confidentiality
23 Agreement") in the form of Attachment "A." Each such person signing a Confidentiality
24 Agreement shall be subject to and bound by this Order. Counsel for the party seeking to
25 disclose Confidential Material to any Qualified Person pursuant to paragraphs 5(e)
26 through 5(g) shall be responsible for retaining the executed originals of all such
27
28

1 Confidentiality Agreements and certifying that such individuals have complied with the
2 requirements of Paragraph 14.

3 No Party may file in the public record in this action any Confidential Material
4 without written permission from the Designating Party or a court order secured after
5 appropriate notice to all interested persons. Any Party that seeks to file under seal any
6 Confidential Material must comply with Civil Local Rule 79-5.

7 7. If a person receiving Confidential Material learns that, by inadvertence or
8 otherwise, it has disclosed Confidential Material to any person or in any circumstance not
9 authorized under this Order, that person shall request the recipient to return the
10 Confidential Material including all copies thereof, and notify the Designating Party that
11 produced the Confidential Material of the disclosure.

12 8. Nothing in this Order shall prohibit disclosure of Confidential Material in
13 response to compulsory process or the process of any governmental regulatory agency. If
14 any person subject to this Order, including a person subject to a Confidentiality
15 Agreement under this Order, is served with such process or receives notice of any
16 subpoena or other discovery request seeking Confidential Material, such person shall
17 promptly (not more than three (3) working days after receipt of such process or notice)
18 notify the Designating Party of such process or request, shall take all reasonable steps to
19 refrain from producing Confidential Material in response to such process, and shall afford
20 a reasonable opportunity for the Designating Party to oppose the process or to seek a
21 protective order.

22 9. Counsel for any deponent, party or non-party may designate specific
23 portions of deposition testimony or exhibits as Confidential Material by indicating on the
24 record at the deposition that the testimony of the deponent or any exhibits to his
25 testimony are to be treated as confidential. The Court reporter shall separately bind such
26 testimony and exhibits in a transcript bearing the legend "Confidential – Subject To
27 Protective Order" on the cover page. Failure of Counsel to designate testimony or
28

1 exhibits as confidential at deposition, however, shall not constitute a waiver of the
2 confidentiality of the testimony or exhibits. Upon receipt of the transcript of the
3 deposition, Counsel shall be entitled to designate specific pages and lines of the transcript
4 or the exhibits as confidential within 30 (thirty) days after receipt of the transcript. Until
5 Counsel for the deponent, party or non-party designates the transcript or exhibits as
6 confidential, however, any other party shall be entitled to treat the transcript or exhibits as
7 non-confidential material.

8 10. No one may attend the portions of depositions or review the transcripts of
9 the portions of any depositions at which Confidential Material is shown or discussed other
10 than those persons designated in Paragraph 5 and outside counsel for any non-party
11 deponent (who shall first sign the Confidentiality Agreement).

12 11. A party or other person objecting to designation of any document(s) or
13 material(s) as Confidential Material shall provide written notice of the objection to
14 Counsel for the Designating Party, specifying the document(s) or material(s) that are the
15 subject of the objection. Upon receipt of the written objection, counsel for the
16 Designating Party shall, within twenty (20) days, provide a written response to the
17 objecting party explaining the basis for the designation as Confidential Material; otherwise
18 the document(s) or material(s) shall be deemed to be no longer Confidential
19 without a court order. The parties and any other objecting person(s) shall confer
20 in good faith in an effort to resolve the objection and any response by the Designating
21 Party. If the objecting party or person and the Designating Party are unable to resolve the
22 issue, the Designating Party, within fourteen (14) days after serving its written response
23 to the objection notification, may file a motion with the Court to continue the designation
24 of the document(s) or material(s) as "Confidential Material." In deciding such a motion,
25 the Court shall make an independent determination as to whether or not the document(s)
26 or materials) is Confidential and is entitled to protection under applicable law. To
27 maintain confidential status, the Designating Party shall have the burden of establishing
28

1 that the document(s) or material(s) constitutes Confidential Material as defined in
2 Paragraph 1 of this Order, and is entitled to protection under applicable law. If the
3 Designating Party does not file a motion seeking to maintain the "Confidential
4 Designation" within fourteen (14) days after serving its written response to the objection
5 to confidentiality, the document(s) or material(s) at issue shall be deemed to be no longer
6 confidential.

7 12. If any Confidential Material is inadvertently provided to a discovering party
8 without being marked as confidential in accordance with this Order, the producing party
9 may thereafter designate such materials as confidential and the initial failure to so mark
10 the material shall not be deemed a waiver of its confidentiality. Until the material is
11 designated as confidential by the Designating Party, however, the discovering party shall
12 be entitled to treat the material as non-confidential.

13 13. If a party inadvertently produces information that it later discovers, or in
14 good faith later asserts, to be privileged or otherwise protected from disclosure, the
15 production of that information will not be presumed to constitute a waiver of any
16 applicable privileges or other protections. In these circumstances, the producing party
17 must immediately notify all parties in writing of the inadvertent production and the basis
18 for the privilege or other protection from production, and request in writing the return or
19 confirmed destruction of the privileged or protected information. Within five days of
20 receiving such notification, and in compliance with the receiving parties' ethical
21 obligations under the law, all receiving parties who have not already reviewed such
22 materials or who have reviewed the materials but do not contest the applicability of the
23 privilege asserted must return or confirm destruction of all such materials, including
24 copies and/or summaries thereof. However, should a receiving party contest the
25 applicability of a privilege asserted with respect to an inadvertently produced document
26 which the receiving party has already reviewed, the receiving party may temporarily
27 retain the document or documents at issue for the sole purpose of contesting the
28

1 applicability of the privilege asserted. Within two (2) business days of the issuance of a
2 court order deeming the contested documents at issue privileged, however, the receiving
3 party must return or confirm destruction of all such materials, including copies and/or
4 summaries thereof.

5 14. Within sixty (60) days of final termination of this lawsuit, including all
6 appeals, (whether by judgment, settlement or otherwise) all materials produced by a party
7 that contain Confidential Material, including all abstracts and summaries of such
8 material, shall be destroyed or returned to Counsel for the Designating Party. Such
9 destroyed or returned materials shall not include the notes or work product of counsel for
10 the parties, expert witnesses or consultants or investigators or agents thereof. Counsel for
11 each such party shall certify that the provisions of this paragraph have been satisfied by
12 sending opposing counsel a letter confirming compliance. Reasonable out-of-pocket
13 costs associated with returning or destroying Confidential Materials will be borne by the
14 party requesting its return or destruction.

15 15. No party receiving documents or materials designated as "Confidential
16 Material," shall have any obligation to object to the designation at the time the designation
17 is made or at any time thereafter. No party shall, by failure to object, be found to have
18 acquiesced or agreed to such designation or be barred from objecting to such designation
19 at any time.

20 16. Nothing contained in this Order shall be a waiver of any objection to the
21 admissibility of any evidence at trial, in any pretrial proceeding or on appeal.
22
23
24
25
26
27
28

1
2 DATED this 28th day of February, 2008.

3 BONNETT, FAIRBOURN, FRIEDMAN, &
4 BALINT, P.C.

5 /s Wendy J. Harrison
6 Andrew S. Friedman (admitted *pro hac vice*)
7 Wendy J. Harrison (CA SBN 151090)
8 2901 North Central Avenue, Suite 1000
9 Phoenix, Arizona 85012

10 CHAVEZ & GERTLER, L.L.P.
11 Mark A. Chavez (CA SBN 90858)
12 Jonathan Gertler (CA SBN 111531)
13 Nance F. Becker (CA SBN 99292)
14 42 Miller Avenue
15 Mill Valley, California 94941

16 COUGHLIN STOIA GELLER
17 RUDMAN & ROBBINS LLP
18 John J. Stoia, Jr. (CA SBN 141757)
19 Theodore J. Pintar (CA SBN 131372)
20 Leslie E. Hurst (CA SBN 178432)
21 655 West Broadway, Suite 1900
22 San Diego, CA 92101
23 (619) 231-1058

24 Attorneys for Plaintiff

25 REED SMITH LLP

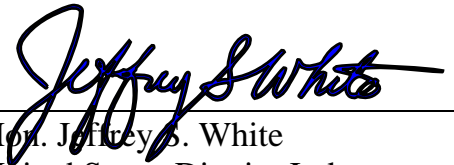
26 /Heather B. Hoesterey
27 Jack R. Nelson (SBN 111863)
28 Tyree P. Jones, Jr. (SBN 127631)
Heather B. Hoesterey (SBN 201254)
Two Embarcadero Center
San Francisco, CA 94111-3922
Telephone: (415) 543-8700

Mailing Address:
P. O. Box 7936
San Francisco, CA 94120-7936
Attorneys for Defendants

~~[PROPOSED]~~ ORDER

IT IS SO ORDERED.

Dated: February 28, 2008



Hon. Jeffrey S. White
United States District Judge

EXHIBIT A

CONFIDENTIALITY AGREEMENT

STATE OF _____

COUNTY OF _____

_____, being duly sworn deposes and says:

I have read the attached Protective Order Regarding Confidential and Trade Secret Information, if any, entered herein, and I agree to be bound by the terms thereof.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2008.

Notary Public

My Commission Expires:

DOCSSFO-12506974.1